IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 854 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

USHABEN WD/O. HARISH ATMARAM CHUNARA

Versus

COMMISSIONER OF POLICE AHMEDABAD

Appearance:

MS BANNA S DUTTA for the Petitioner.

RULE SERVED for Respondent No. 1-2

Mr.A.Y. Kogje, Assistant GOVERNMENT PLEADER, for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 06/07/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenue has challenged her detention order dated 26.12.2003. By the impugned order, the petitioner-detenue is detained as

a 'bootlegger', under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 (" PASA ", for short). Along with the detention order, the petitioner was also served with the grounds of detention.

In the grounds of detention, there is a reference about six pending criminal cases against the petitioner. All these cases are under the Bombay Prohibition Act. The detaining authority, in view of the aforesaid six pending criminal cases, has detained her as, according to the authority, the petitioner is a 'bootlegger'. Except the criminal cases, there is no other material, which is considered by the detaining authority, as statements of witnesses have not been recorded.

The learned Advocate for the petitioner submitted that the cases under the Prohibition Act can, at the most, attract law and order situation, but not public order, as, according to her, there is nothing to show that the petitioner is acting in a high-handed manner or that she is disturbing public order. It is also submitted by her that even the last registered case against her is dated 6.11.2003 and the detention order is passed after more than one-and-a-half months. It is submitted that even on the ground of delay in passing the detention order, this petition is required to be allowed, as, it can be presumed that the subjective satisfaction of the detaining authority is vitiated because of this long delay.

Mr.A.Y. Kogje, learned AGP, on the other hand, submitted that it is true that the last registered case was on 6.11.2003, but therafter, the authority was considering whether the petitioner should be detained under PASA and, according to him, even if there is some delay, it can be said to have been explained. However, when the petitioner was already subjected to registered criminal cases and that is the only ground on which, now, she is detained, and when no statement of any witness is recorded, the object of preventive detention is frustrated by waiting for more than one-and-a-half months. To substantiate her say on the point of delay in passing the detention order, the learned Advocate for the petitioner has relied on the decision of this Court in Elesh Nandubhai Patel v. Commissioner of Police, 1997(1) GLH 381, wherein this Court has observed as under in paragraph 21 :-

> " ... ...
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> 21. In the instant case, the last

> registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority relied on two incidents of 2nd October and 10th October, 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S. Ramamurthy reported in 1993(2) Suppli SCC 61.
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> ... ..."

Therefore, without considering the first point whether it would amount to breach of public order, this petition is required to be allowed on the second point raised by the petitioner.

At this stage, Ms.Banna Dutta, learned Advocate for the petitioner, has submitted that since six criminal cases were registered against the petitioner, in order to see that such cases may not be repeated by the petitioner, she has instructions to make a statement that the petitioner will not enter the local limits of the territorial jurisdiction of Kagdapith Police Station, for a period of two months from today. Raipur Darwaja area, where she is residing, comes within local limits of the territorial jurisdiction of Kagdapith Police Station. This voluntary statement of the Advocate is recorded, which, according to her, is made by her under the

instructions by her client or her relative. It is for the learned AGP to inform the concerned Police Officer to monitor this aspect. The learned Advocate for the petitioner also further submitted that the petitioner is a widow and she is a victim of circumstances, as she is required to maintain her family, because, there is no earning member, as her husband has already died. The State, in future, may consider such aspect when the same is brought to their notice and if the detenue is showing repentance and giving some assurance about abstaining from such type of activity, the State may consider this aspect whether in such cases, further detention is necessary or not. In the instant case, since a voluntary statement is made by the learned Advocate on behalf of the petitioner-detenue, the concerned Police Authority will see to it that she is not allowed to enter the aforesaid area for a period of two months from today, as it may help in reforming her character in future.

The petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the detenue be released forthwith unless she is required in connection with any other case. The Rule is made absolute accordingly.

July 6, 2004 (P.B. Majmudar, J.)

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(apj)